

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 2543/2024

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

DATE.....

SIGNATURE:.....

In the matter between:

NALEDZANA SIMSON SINTHUMULE

PLAINTIFF

And

MINISTER OF POLICE

DEFENDANT

JUDGMENT

KGANYAGO J

- [1] The plaintiff has instituted an action against the defendant for alleged unlawful arrest and detention. According to the plaintiff's particulars of claim he was arrested on 11th June 2023 without a warrant by members of the South African Police Service (SAPS) stationed at Seshego Police Station whose full names and further details are unknown to him. He was detained at Seshego Police Station for four days and thereafter released without making an appearance in court. The plaintiff has further stated that the said unknown police officers were acting within the course and scope of their employment.
- [2] The defendant is defending the plaintiff's action. In his plea the defendant has raised a special plea of the plaintiff's non-compliance to The Institution of Legal Proceedings Against Certain Organs of State Act. On the merits the defendant has admitted that members of the SAPS act within the course and scope of employment with the defendant when they are on duty. For the remainder of the plaintiff's particulars of claim the defendant had pleaded that the allegations are unknown to him, cannot admit same and put the plaintiff to proof thereof.
- [3] The plaintiff has noted an exception against the defendant's plea on the grounds that it lacks averments which are necessary to sustain a defence. In substantiating his exception, the plaintiff has stated that as provided by Rule 18(4), every pleading shall contain a clear and concise statement of the material facts upon which a pleader relies for his claim or defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposing party to reply thereto. It is unclear on the defendant's plea as to what are the grounds for the defence since defendant only admits and deny

the paragraphs of the plaintiff's particulars of claim without reasons or sufficient particularity thereto.

[4] The plaintiff further stated that Rule 18(5) provides that when in any pleading a party who denies an allegation of fact in a previous pleading of the opposing party, he shall not do so evasively but shall answer the point of substance. It is clear from the defendant's plea that the defendant ignored to state the reasons for the denial of the allegations in the plaintiff's claim but merely denied important allegations which contains the basis of the plaintiff's claim evasively.

[5] A party who raises an exception will be complaining about the defect in the pleadings and notifying the other party to cure the defect. In the case at hand the plaintiff's cause of complaint is that the defendant's plea lacks averments which are necessary to sustain a defence. The defendant failed to cure the alleged defect despite been served with a notice in terms of Rule 23 of the Uniform Rules of Court (the Rules). That led to the plaintiff noting an exception and setting it down for adjudication. On the date of the adjudication of the exception the defendant was in default, and the exception is being decided upon on the version of the plaintiff only. I am called upon to determine whether the defendant's plea as it stand is excipiable.

[6] In order to succeed an excipient has a duty to persuade the court that upon every interpretation which the pleading in question can reasonably bear, no cause of action is disclosed, failing which the exception ought not to be upheld. In *Living Hands v Ditz*¹ Makgoka J said:

¹ 2013 (2) SA 368 (GSJ) at para 15

“Before I consider the exceptions, the overview of the applicable general principles distilled from case law is necessary:

- (a) In considering an exception that a pleading does not sustain a cause of action, the court will accept, as true, the allegations pleaded by the plaintiff to assess whether they disclose a cause of action.
- (b) The object of an exception is not to embarrass one’s opponent or to take advantage of a technical flaw, but to dispose of the case or a portion thereof in an expeditious manner, or to protect oneself against an embarrassment which is so serious as to merit the costs even of an exception.
- (c) The purpose of an exception is to raise a substantive question of law which may have the effect of settling the dispute between the parties. If the exception is not taken for that purpose, an excipient should make out a very clear case before it would be allowed to succeed.
- (d) An excipient who alleges that a summons does not disclose a cause of action must establish that, upon any construction of the particulars of claim, no cause of action is disclosed.
- (e) An over-technical approach should be avoided because it destroys the usefulness of the exception procedure, which is to weed out cases without legal merit.
- (f) Pleadings must be read as a whole and an exception cannot be taken to a paragraph or a part of a pleading that is not self-contained.
- (g) Minor blemishes and unradical embarrassment caused by a pleading can and should be cured by further particulars”.

[7] In *C.W v GT*² it was held that:

“...the respondent’s exceptions were predicated on the contention that the applicant’s particulars of claim did not disclose a cause of action. The test in this regard is trite: the court asks the question upon any construction of the particulars of claim, no cause of action is disclosed. The exceptions could only be upheld if this question was answered in the

² [2023] ZASCA 23 (13 March 2023) at para 35

affirmative. The onus is on an excipient such the respondent, to establish this. This should have been the starting point for the high court in considering the exceptions. Unfortunately, it did not embark upon such an enquiry. I do so now, in the light of the averments in the particulars of claim”.

- [8] The defendant in his plea has conceded that members of the SAPS when on duty act within the course and scope of employment. For the remainder of plaintiff’s cause of action, the defendant could not admit as he alleges that those facts are unknown to him and put the plaintiff to the proof. The concession made by the defendant do not specifically refers to the members of the SAPS who had allegedly arrested and detained the plaintiff on the day in question, but to any members of the SAPS who arrest whilst on duty that he or she will be acting within the course and scope of employment.
- [9] As the defendant’s averments in his plea are that the allegations which the plaintiff’s cause of action is based are unknown to him, it will not be expected of the defendant to add any further facts to his plea. The mere fact that the defendant is stating that the facts which the plaintiff is relying on in his cause of action is unknown to him, is the basis of his defence and is sufficient to enable the plaintiff to reply and put facts which he feels are necessary in a replication.
- [10] The plaintiff in his particulars of claim is alleging that the arrest was unlawful and wrongful. The plaintiff is seeking compensation for non-patrimonial damages. Since the defendant is neither admitting or denying the arrest and detention, the onus will be on the plaintiff to (i) establish that his liberty has been interfered with; (ii) establish that this interference occurred intentionally, and not that the defendant knew that it was wrong to do so; (iii) the deprivation of liberty must be wrongful, with the onus falling on the defendant

to show why it is not; and the plaintiff must establish that the conduct of the defendant must have caused, both legally and factually, the harm for which compensation is sought. (See *De Klerk v Minister of Police*³). Upon establishing these requirements, the defendant will be bound by his papers on how to justify his defence as pleaded.

[11] Counsel for the plaintiff was engaged on what more facts could the defendant have added to his plea if the facts which the plaintiff's cause of action was based was unknown to him, and his response was that the defendant should have consulted properly. There is no evidence that counsel for the defendant did not consult properly before preparing the defendant's plea. What counsel for the plaintiff was submitting was merely assumption which does not assist the court in any way.

[12] It is not correct that the defendant in his plea only admit, deny and note the paragraphs of the plaintiff's particulars of claim without reasons or sufficient reasons. The defendant has stated that the allegations are unknown to him hence he could not admit and put the plaintiff to proof. In my view, with the averments made in the plea, it cannot be said that upon any construction of the defendant's plea, no defence has been disclosed or that the plea lacks sufficient particulars to enable the plaintiff to prepare for his case, or file a replication if he so wishes. Accordingly, the plaintiff's exception stands to fail.

[13] In the result the following order is made:

13.1 The plaintiff's exception to the defendant's plea is dismissed.

13.2 There is no order as to costs.

³ [2019] ZACC 32; 2019 (12) BCLR 1425 (CC); 2020 (1) SACR 1 (CC); 2021 (4) SA 585 (CC); 2020 (8K6) QOD 1 (CC) (22 August 2019) at para 14

KGANYAGO J

**JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE**

APPEARANCES:

Counsel for the plaintiff : Adv Mawela

**Instructed by : Harman Nethonda Attorneys
INC**

Counsel for the defendant : In default

Date heard : 20th July 2026

Electronically circulated on : 28th July 2026